

**UNITED STATES COURT OF APPEALS
TENTH CIRCUIT**

JUL 7 1999

PATRICK FISHER
Clerk

WAYNE M. PARKER,

Petitioner-Appellant,

v.

MICHAEL A. LANSING,

Respondent-Appellee.

No. 98-3353

(D.C. 98-CV-3325-RDR)
(District of Kansas)

ORDER AND JUDGMENT *

Before **SEYMOUR** , Chief Judge, **BALDOCK** , and **HENRY** , Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App.P.34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Petitioner Wayne M. Parker is an inmate in the United States Disciplinary Barracks, Fort Leavenworth, Kansas. He has filed a petition for habeas corpus

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

pursuant to 28 U.S.C. § 2241, challenging the legality of his incarceration. As the district court correctly determined, however, Mr. Parker's petition reveals that his direct appeal is pending before the United States Army Court of Criminal Appeals. See Rec. doc. 1, at 3. "Petitioner must exhaust his military remedies before filing a civil habeas petition." Lundy v. Zelez, 908 F.2d 593, 594 (10th Cir. 1990). Therefore, we AFFIRM the district court's dismissal of Mr. Parker's petition for habeas corpus without prejudice.

Entered for the Court,

Robert H. Henry
Circuit Judge